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8 **UNITED STATES DISTRICT COURT**
9 **SOUTHERN DISTRICT OF CALIFORNIA**
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11 WILLIAM WHITE,
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14 CYNTHIA TAMPKINS, Warden,
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	Petitioner,
v.	
Respondent.	

Case No.: 16cv2121 WQH (PCL)

ORDER:

**(1) GRANTING APPLICATION TO
PROCEED IN FORMA PAUPERIS and**
**(2) DISMISSING PETITION
WITHOUT PREJUDICE**

Petitioner, a state prisoner proceeding pro se, has submitted a Petition for Writ of Habeas Corpus pursuant to 28 U.S.C. § 2254, together with a request to proceed in forma pauperis.

MOTION TO PROCEED IN FORMA PAUPERIS

Petitioner has no funds on account at the California correctional institution in which he is presently confined. Petitioner cannot afford the \$5.00 filing fee. Thus, the Court **GRANTS** Petitioner's application to proceed in forma pauperis, and allows Petitioner to prosecute the above-referenced action as a poor person without being required to prepay fees or costs and without being required to post security. The Clerk of the Court shall file the Petition for Writ of Habeas Corpus without prepayment of the filing fee.

1 **FAILURE TO STATE A COGNIZABLE CLAIM ON FEDERAL HABEAS**

2 The Petition must be dismissed, however, because this Court lacks subject matter
3 jurisdiction. Petitioner raises only one claim in the Petition – that the trial court
4 improperly imposed a restitution fine without sufficient evidence of his ability to pay.
5 (*See* Pet. at 6.)

6 Title 28 U.S.C. § 2254(a) provides that:

7 The Supreme Court, a Justice thereof, a circuit judge, or a district court shall
8 entertain an application for a writ of habeas corpus in behalf of a person in
9 custody pursuant to the judgment of a State court only on the ground that he
10 is in custody in violation of the Constitution or laws or treaties of the United
11 States.

11 28 U.S.C. § 2254(a) (emphasis added).

12 The requirement that a habeas petitioner be “in custody in violation of [federal
13 law]” is “jurisdictional.” *See Bailey v. Hill*, 599 F.3d 976, 978 (9th Cir. 2010); cf.
14 *Williamson v. Gregoire*, 151 F.3d 1180, 1182 (9th Cir. 1998) (noting that 28 U.S.C. §
15 2241(c)(3)s requirement that a habeas petitioner be “in custody in violation of the
16 Constitution or laws or treaties of the United States” is jurisdictional). “The plain
17 meaning of the text of § 2254(a) makes clear that physical custody alone is insufficient to
18 confer jurisdiction.” *See Bailey*, 599 F.3d at 980. Rather, “[it] explicitly requires a nexus
19 between the petitioner’s claim and the unlawful nature of the custody.” *See id.* (emphasis
20 added) (citing *Dickerson v. United States*, 530 U.S. 428, 439 n. 3 (2000)). If the remedy
21 sought is merely “the elimination or alteration” of a petitioners restitutionary obligation,
22 then there is no such nexus between the habeas claim and the petitioners purportedly
23 unlawful custody. *See id.* at 981; see also *Washington v. Smith*, 564 F.3d 1350, 1350-51
24 (7th Cir. 2009) (holding that a petitioner did not satisfy the “in custody” requirement
25 because, even if he prevailed on his ineffective assistance claim, “the only possible
26 benefit [would] be a lower payment to his victim”) (quoted with approval in *Bailey*, 599
27 F.3d at 981-82). In such a case, the action must be dismissed for lack of subject matter
28 jurisdiction. *See Bailey*, 599 F.3d at 984.

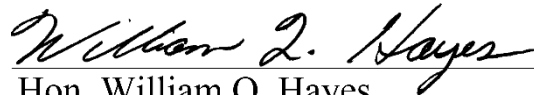
1 Here, Petitioner's only claim challenges the restitution order. Even if Petitioner
2 prevailed on this claim, he would not obtain early release from custody; instead, he would
3 be entitled to only "the elimination or alteration of a money judgment." *See id.* at 981.
4 Thus, the "nexus" between these claims and illegal custody is lacking. *See id.* Put
5 differently, the legal theories on which his claim relies are irrelevant – the only relevant
6 consideration is whether his claims would impair the validity of the custodial sentence.
7 *See id.* at 978, 984 (affirming dismissal of ineffective assistance claim for lack of subject
8 matter jurisdiction); *Washington*, 564 F.3d at 1351. Because Petitioner's claim does
9 affect the legality of Petitioner's confinement, this Court lacks subject matter jurisdiction
10 over the action. *See Bailey*, 599 F.3d at 984.

11 CONCLUSION

12 For the reasons discussed above, the Court **GRANTS** the application to proceed in
13 forma pauperis and **DISMISSES** the Petition without prejudice, for lack of subject matter
14 jurisdiction.

15 IT IS SO ORDERED.

16 Dated: August 30, 2016

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18 Hon. William Q. Hayes
19 United States District Court
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